

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

LANCE GRESHAM,

Plaintiff,

v.

PROLOGIX DISTRIBUTION SERVICES
(WEST) LLC, CVS PHARMACY, INC.,
AND VICTOR CASTRO,

Defendants.

No. 1:16-cv-00004-KK-LF

**DEFENDANT PROLOGIX DISTRIBUTION SERVICES (WEST) LLC AND
VICTOR CASTRO'S ANSWER TO COMPLAINT WRONGFUL TERMINATION**

Defendants ProLogix Distribution Services LLC and Victor Castro ("Defendants ProLogix"), by and through its attorneys Elena C. Bundy, and Stoel Rives LLP, and David W. Peterson and Keleher & McLeod, PA, answers as follows:

Jurisdiction and Venue

1. Answering paragraph 1 of Plaintiff's Complaint, Defendants ProLogix, on information and belief, admit the same.

2. Answering paragraph 2 of Plaintiff's Complaint, Defendants ProLogix admit the same.

3. Answering paragraph 3 of Plaintiff's Complaint, Defendants ProLogix admit the same.

4. Answering paragraph 4 of Plaintiff's Complaint, Defendants ProLogix deny as stated the allegations contained in the same.

DEFENDANTS PROLOGIX DISTRIBUTION
SERVICES (WEST) LLC AND VICTOR CASTRO'S
ANSWER TO COMPLAINT 1:16-cv-00004-KK-LF - 1

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STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

1 5. Answering paragraph 5 of Plaintiff's Complaint, Defendants ProLogix admit the
2 same.

3 6. Answering paragraph 6 of Plaintiff's Complaint, Defendants ProLogix admit the
4 same.

5 7. Answering paragraph 7 of Plaintiff's Complaint, Defendants ProLogix admit that
6 "[o]n September 14, 2015, the New Mexico Human Rights Bureau issued Mr. Gresham a notice
7 and right to sue letter." The remaining allegation contained in paragraph 7 of Plaintiff's
8 Complaint is a legal conclusion to which no response is required.

9 8. Answering paragraph 8 of Plaintiff's Complaint, those allegations are now moot.
10 Defendants ProLogix admit that jurisdiction and venue are proper in the United States District
11 Court for the District of New Mexico where this case has been removed.

12 **Background Facts**

13 9. Answering paragraph 9 of Plaintiff's Complaint, Defendants ProLogix deny as
14 stated the allegations contained in the same.

15 10. Answering paragraph 10 of Plaintiff's Complaint, Defendants ProLogix admit the
16 same.

17 11. Answering paragraph 11 of Plaintiff's Complaint, Defendants ProLogix admit the
18 same.

19 12. Answering paragraph 12 of Plaintiff's Complaint, Defendants ProLogix admit the
20 same.

21 13. Answering paragraph 13 of Plaintiff's Complaint, Defendants ProLogix are
22 without sufficient information to form a belief as to the truth or falsity that "Mr. Gresham saw a
23 tattoo with writing on a CVS employee's clavicle that began 'love is' and he asked her what the
24 remainder of the tattoo said," and therefore deny the same. Defendants ProLogix deny the
25 remaining allegations in paragraph 13 of Plaintiff's Complaint.

1 14. Answering paragraph 14 of Plaintiff's Complaint, Defendants ProLogix are
2 without sufficient information to form a belief as to the truth or falsity and therefore deny the
3 same.

4 15. Answering paragraph 15 of Plaintiff's Complaint, Defendants ProLogix are
5 without sufficient information to form a belief as to the truth or falsity and therefore deny the
6 same. .

7 16. Answering paragraph 16 of Plaintiff's Complaint, Defendants ProLogix are
8 without sufficient information to form a belief as to the truth or falsity and therefore deny the
9 same.

10 17. Answering paragraph 17 of Plaintiff's Complaint, Defendants ProLogix admit the
11 same.

12 18. Answering paragraph 18 of Plaintiff's Complaint, Defendants ProLogix deny the
13 same as stated.

14
15 **Count I-New Mexico Human Rights Act and Title VII Discrimination Claims**

16 Defendants ProLogix incorporate by reference its responses to Paragraphs 1 through 18
17 above.

18 19. Answering paragraph 19 of Plaintiff's Complaint, Defendants ProLogix admit the
19 same.

20 20. Answering paragraph 20 of Plaintiff's Complaint, Defendants ProLogix deny the
21 same.

22 21. Answering paragraph 21 of Plaintiff's Complaint, Defendants ProLogix deny the
23 same.

24 22. Answering paragraph 22 of Plaintiff's Complaint, Defendants ProLogix deny the
25 same.
26

23. Answering paragraph 23 of Plaintiff's Complaint, Defendants ProLogix deny the same.

24. Answering paragraph 24 of Plaintiff's Complaint, Defendants ProLogix deny the same.

25. Answering paragraph 25 of Plaintiff's Complaint, Defendants ProLogix deny the same.

26. Answering paragraph 26 of Plaintiff's Complaint, Defendants ProLogix deny the same.

27. Answering paragraph 27 of Plaintiff's Complaint, Defendants ProLogix deny the same.

28. Answering paragraph 28 of Plaintiff's Complaint, Defendants ProLogix deny the same.

Count II: Intentional Interference With Contract

Defendants ProLogix incorporate by reference its responses to Paragraphs 1 through 28 above.

29. Answering paragraph 29 of Plaintiff's Complaint, Defendants ProLogix admit that ProLogix employed Plaintiff, but deny that such employment was other than at-will.

30. Answering paragraph 30 of Plaintiff's Complaint, Defendants ProLogix deny the same.

31. Answering paragraph 31 of Plaintiff's Complaint, Defendants ProLogix deny the same.

32. Answering paragraph 32 of Plaintiff's Complaint, Defendants ProLogix deny the same.

33. Answering paragraph 33 of Plaintiff's Complaint, Defendants ProLogix deny the same.

PRAYER FOR RELIEF

Plaintiff's prayer for relief requires no answer. Defendants Prologix deny, however, that Plaintiff is entitled to any damages or other relief.

AFFIRMATIVE DEFENSES

Without assuming Plaintiff's burden of proof on any issue, Defendants ProLogix assert the following affirmative defenses:

1. Plaintiff's claims fail to state a claim for which relief may be granted.
2. Plaintiff has failed to mitigate damages. Alternatively, Plaintiff's damages must be reduced by wages, compensation, pay and benefits, or other earnings, remunerations, profits and benefits actually received by Plaintiff or that could have been received had Plaintiff used reasonable diligence to mitigate his damages.
3. Defendants ProLogix had legitimate, non-discriminatory reasons for its actions.
4. Plaintiff's Complaint is barred in whole or in part because his losses, if any, were caused by factors unrelated to Defendants ProLogix's conduct or lack thereof.
5. Plaintiff's damages, if any, were caused by his own conduct.
6. The entitlement to any relief which otherwise may be due to Plaintiff may be limited by the after-acquired evidence doctrine.
7. Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, estoppel, and unclean hands.
8. Defendants' actions were justified and privileged and involved neither improper

1 means nor improper purpose.

2 Defendants ProLogix reserves its right to assert additional affirmative defenses that
3 become apparent upon discovery or further investigation of the facts and law.

4
5 **DEFENDANTS PROLOGIX'S PRAYER FOR RELIEF**

6 WHEREFORE, having fully answered Plaintiff's Complaint for Wrongful Termination
7 and having set forth its affirmative defenses, Defendants ProLogix pray for the following relief:

- 8
9 1. Dismissal of Plaintiff's Complaint for Wrongful Termination, with prejudice;
10 2. An award of costs and reasonable attorneys' fees; and
11 3. For such other relief as the Court deems just and proper.

1 DATED: January 11, 2016.

2 STOEL RIVES LLP
3 Elena C. Bundy, WSBA No. 38836
4 elena.bundy@stoel.com
5 STOEL RIVES LLP
6 600 University Street, Suite 3600
7 Seattle, WA 98101
8 Telephone: (206) 624-0900
9 Facsimile: (206) 386-7500
10 Admitted *Pro Hac Vice*

11 KELEHER & MCLEOD, PA

12 /s/ David W. Peterson
13 David W. Peterson
14 dwp@keleher-law.com
15 KELEHER & MCLEOD, PA
16 P.O. Box AA
17 Albuquerque, NM 87103
18 Telephone: (505) 346-9139
19 Facsimile: (505) 346-1370

20 *Attorneys for Defendants ProLogix*
21 *Distribution Services (West) LLC and Victor*
22 *Castro*

CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send electronic notification to the parties in this case.

Dated January 11, 2016.

s/Elena C. Bundy

Elena C. Bundy, WSBA No. 38836

Stoel Rives LLP

600 University Street, Suite 3600

Seattle, WA 98101

Telephone: (206) 624-0900

Facsimile: (206) 386-7500

Admitted Pro Hac Vice

Attorneys for Defendant Prologix Distribution
Services, LLC and Victor Castro

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